



General Assembly

**Amendment**

January Session, 2009

LCO No. 8180

**\*HB0609708180HDO\***

Offered by:

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REP. MIOLI, 136<sup>th</sup> Dist.  
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SEN. LEBEAU, 3<sup>rd</sup> Dist.  
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REP. JOHNSON, 49<sup>th</sup> Dist.  
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REP. LEONE, 148<sup>th</sup> Dist.  
REP. WILLIAMS, 68<sup>th</sup> Dist.  
REP. PERILLO, 113<sup>th</sup> Dist.  
SEN. FRANTZ, 36<sup>th</sup> Dist.  
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To: Subst. House Bill No. 6097

File No. 956

Cal. No. 238

**"AN ACT CONCERNING BROWNFIELDS DEVELOPMENT PROJECTS."**

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. Section 25-68d of the general statutes is repealed and the  
4 following is substituted in lieu thereof (*Effective from passage*):

5 (a) No state agency shall undertake an activity or a critical activity

6 within or affecting the floodplain without first obtaining an approval  
7 or approval with conditions from the commissioner of a certification  
8 submitted in accordance with subsection (b) of this section or  
9 exemption by the commissioner from such approval or approval with  
10 conditions in accordance with subsection (d) of this section.

11 (b) Any state agency proposing an activity or critical activity within  
12 or affecting the floodplain shall submit to the commissioner  
13 information certifying that:

14 (1) The proposal will not obstruct flood flows or result in an adverse  
15 increase in flood elevations, significantly affect the storage or flood  
16 control value of the floodplains, cause an adverse increase in flood  
17 velocities, or an adverse flooding impact upon upstream, downstream  
18 or abutting properties, or pose a hazard to human life, health or  
19 property in the event of a base flood or base flood for a critical activity;

20 (2) The proposal complies with the provisions of the National Flood  
21 Insurance Program (44 CFR 59 et seq.), and any floodplain zoning  
22 requirements adopted by a municipality in the area of the proposal  
23 and the requirements for stream channel encroachment lines adopted  
24 pursuant to the provisions of section 22a-342;

25 (3) The agency has acquired, through public or private purchase or  
26 conveyance, easements and property in floodplains when the base  
27 flood or base flood for a critical activity is elevated above the  
28 increment authorized by the National Flood Insurance Program or the  
29 flood storage loss would cause adverse increases in such base flood  
30 flows;

31 (4) The proposal promotes long-term nonintensive floodplain uses  
32 and has utilities located to discourage floodplain development;

33 (5) The agency has considered and will use to the extent feasible  
34 flood-proofing techniques to protect new and existing structures and  
35 utility lines, will construct dikes, dams, channel alterations, seawalls,  
36 breakwaters or other structures only where there are no practical

37 alternatives and will implement stormwater management practices in  
38 accordance with regulations adopted pursuant to section 25-68h; and

39 (6) The agency has flood forecasting and warning capabilities  
40 consistent with the system maintained by the National Weather  
41 Service and has a flood preparedness plan.

42 (c) The commissioner shall make a decision either approving,  
43 approving with conditions or rejecting a certification not later than  
44 ninety days after receipt of such certification, except that in the case of  
45 an exemption any decision shall be made ninety days after the close of  
46 the hearing. If a certification is rejected, the agency shall be entitled to a  
47 hearing in accordance with the provisions of sections 4-176e, 4-177, 4-  
48 177c and 4-180.

49 (d) Any state agency proposing an activity or critical activity within  
50 or affecting the floodplain may apply to the commissioner for  
51 exemption from the provisions of subsection (b) of this section. Such  
52 application shall include a statement of the reasons why such agency is  
53 unable to comply with said subsection and any other information the  
54 commissioner deems necessary. The commissioner, at least thirty days  
55 before approving, approving with conditions or denying any such  
56 application, shall publish once in a newspaper having a substantial  
57 circulation in the affected area notice of: (1) The name of the applicant;  
58 (2) the location and nature of the requested exemption; (3) the tentative  
59 decision on the application; and (4) additional information the  
60 commissioner deems necessary to support the decision to approve,  
61 approve with conditions or deny the application. There shall be a  
62 comment period following the public notice during which period  
63 interested persons and municipalities may submit written comments.  
64 After the comment period, the commissioner shall make a final  
65 determination to either approve the application, approve the  
66 application with conditions or deny the application. The commissioner  
67 may hold a public hearing prior to approving, approving with  
68 conditions or denying any application if in the discretion of the  
69 commissioner the public interest will be best served thereby, and the

70 commissioner shall hold a public hearing upon receipt of a petition  
71 signed by at least twenty-five persons. Notice of such hearing shall be  
72 published at least thirty days before the hearing in a newspaper  
73 having a substantial circulation in the area affected. The commissioner  
74 may approve or approve with conditions such exemption if the  
75 commissioner determines that (A) the agency has shown that the  
76 activity or critical activity is in the public interest, will not injure  
77 persons or damage property in the area of such activity or critical  
78 activity, complies with the provisions of the National Flood Insurance  
79 Program, and, in the case of a loan or grant, the recipient of the loan or  
80 grant has been informed that increased flood insurance premiums may  
81 result from the activity or critical activity. An activity shall be  
82 considered to be in the public interest if it is a development subject to  
83 environmental remediation regulations adopted pursuant to section  
84 22a-133k and is in or adjacent to an area identified as a regional center,  
85 neighborhood conservation area, growth area or rural community  
86 center in the State Plan of Conservation and Development pursuant to  
87 chapter 297, or (B) in the case of a flood control project, such project  
88 meets the criteria of subparagraph (A) of this subdivision and is more  
89 cost-effective to the state and municipalities than a project constructed  
90 to or above the base flood or base flood for a critical activity. Following  
91 approval for exemption for a flood control project, the commissioner  
92 shall provide notice of the hazards of a flood greater than the capacity  
93 of the project design to each member of the legislature whose district  
94 will be affected by the project and to the following agencies and  
95 officials in the area to be protected by the project: The planning and  
96 zoning commission, the inland wetlands agency, the director of civil  
97 defense, the conservation commission, the fire department, the police  
98 department, the chief elected official and each member of the  
99 legislative body, and the regional planning agency. Notice shall be  
100 given to the general public by publication in a newspaper of general  
101 circulation in each municipality in the area in which the project is to be  
102 located.

103 (e) The use of a mill that is located on a brownfield, as defined in

104 section 32-9kk, shall be exempt from the certification requirements of  
105 subdivision (4) of subsection (b) of this section, provided the agency  
106 demonstrates: (1) The activity is subject to the environmental  
107 remediation requirements of the regulations adopted pursuant to  
108 section 22a-133k, (2) the activity is limited to the areas of the property  
109 where historical mill uses occurred, (3) any critical activity is above the  
110 five hundred year flood elevation, and (4) the activity complies with  
111 the provisions of the National Flood Insurance Program.

112 [(e)] (f) The failure of any agency to comply with the provisions of  
113 this section or any regulations adopted pursuant to section 25-68c shall  
114 be grounds for revocation of the approval of the certification.

115 [(f)] (g) The provisions of this section shall not apply to any  
116 proposal by the Department of Transportation for a project within a  
117 drainage basin of less than one square mile.

118 Sec. 2. Subdivision (1) of section 22a-134 of the general statutes is  
119 repealed and the following is substituted in lieu thereof (*Effective from*  
120 *passage*):

121 (1) "Transfer of establishment" means any transaction or proceeding  
122 through which an establishment undergoes a change in ownership, but  
123 does not mean:

124 (A) Conveyance or extinguishment of an easement;

125 (B) Conveyance of an establishment through a foreclosure, as  
126 defined in subsection (b) of section 22a-452f, [or] foreclosure of a  
127 municipal tax lien or through a tax warrant sale pursuant to section 12-  
128 157, [or, provided the establishment is within the pilot program  
129 established in subsection (c) of section 32-9cc,] an exercise of eminent  
130 domain pursuant to section 8-128 or 8-193 or by condemnation  
131 pursuant to section 32-224 or purchase pursuant to a resolution by the  
132 legislative body of a municipality authorizing the acquisition through  
133 eminent domain for establishments that also meet the definition of a  
134 brownfield as defined in section 32-9kk or a subsequent transfer by

135 such municipality that has foreclosed on the property, foreclosed  
136 municipal tax liens or that has acquired title to the property through  
137 section 12-157, or has been within the pilot program established in  
138 subsection (c) of section 32-9cc, or has acquired such property through  
139 the exercise of eminent domain pursuant to section 8-128 or 8-193 or by  
140 condemnation pursuant to section 32-224 or a resolution, provided (i)  
141 the party acquiring the property from the municipality did not  
142 establish, create or contribute to the contamination at the establishment  
143 and is not affiliated with any person who established, created or  
144 contributed to such contamination or with any person who is or was  
145 an owner or certifying party for the establishment, and (ii) on or before  
146 the date the party acquires the property from the municipality, such  
147 party or municipality enters and subsequently remains in the  
148 voluntary remediation program administered by the commissioner  
149 pursuant to section 22a-133x, as amended by this act, and remains in  
150 compliance with schedules and approvals issued by the commissioner.  
151 For purposes of this subparagraph, municipality includes any  
152 municipality, municipal economic development agency or entity  
153 created or operating under chapter 130 or 132, a nonprofit economic  
154 development corporation formed to promote the common good,  
155 general welfare and economic development of a municipality that is  
156 funded, either directly or through in-kind services, in part by a  
157 municipality, or a nonstock corporation or limited liability company  
158 controlled or established by a municipality, municipal economic  
159 development agency or entity created or operating under chapter 130  
160 or 132;

161 (C) Conveyance of a deed in lieu of foreclosure to a lender, as  
162 defined in and that qualifies for the secured lender exemption  
163 pursuant to subsection (b) of section 22a-452f;

164 (D) Conveyance of a security interest, as defined in subdivision (7)  
165 of subsection (b) of section 22a-452f;

166 (E) Termination of a lease and conveyance, assignment or execution  
167 of a lease for a period less than ninety-nine years including

168 conveyance, assignment or execution of a lease with options or similar  
169 terms that will extend the period of the leasehold to ninety-nine years,  
170 or from the commencement of the leasehold, ninety-nine years,  
171 including conveyance, assignment or execution of a lease with options  
172 or similar terms that will extend the period of the leasehold to ninety-  
173 nine years, or from the commencement of the leasehold;

174 (F) Any change in ownership approved by the Probate Court;

175 (G) Devolution of title to a surviving joint tenant, or to a trustee,  
176 executor or administrator under the terms of a testamentary trust or  
177 will, or by intestate succession;

178 (H) Corporate reorganization not substantially affecting the  
179 ownership of the establishment;

180 (I) The issuance of stock or other securities of an entity which owns  
181 or operates an establishment;

182 (J) The transfer of stock, securities or other ownership interests  
183 representing less than forty per cent of the ownership of the entity that  
184 owns or operates the establishment;

185 (K) Any conveyance of an interest in an establishment where the  
186 transferor is the sibling, spouse, child, parent, grandparent, child of a  
187 sibling or sibling of a parent of the transferee;

188 (L) Conveyance of an interest in an establishment to a trustee of an  
189 inter vivos trust created by the transferor solely for the benefit of one  
190 or more siblings, spouses, children, parents, grandchildren, children of  
191 a sibling or siblings of a parent of the transferor;

192 (M) Any conveyance of a portion of a parcel upon which portion no  
193 establishment is or has been located and upon which there has not  
194 occurred a discharge, spillage, uncontrolled loss, seepage or filtration  
195 of hazardous waste, provided either the area of such portion is not  
196 greater than fifty per cent of the area of such parcel or written notice of  
197 such proposed conveyance and an environmental condition

198 assessment form for such parcel is provided to the commissioner sixty  
199 days prior to such conveyance;

200 (N) Conveyance of a service station, as defined in subdivision (5) of  
201 this section;

202 (O) Any conveyance of an establishment which, prior to July 1, 1997,  
203 had been developed solely for residential use and such use has not  
204 changed;

205 (P) Any conveyance of an establishment to any entity created or  
206 operating under chapter 130 or 132, or to an urban rehabilitation  
207 agency, as defined in section 8-292, or to a municipality under section  
208 32-224, or to the Connecticut Development Authority or any  
209 subsidiary of the authority;

210 (Q) Any conveyance of a parcel in connection with the acquisition of  
211 properties to effectuate the development of the overall project, as  
212 defined in section 32-651;

213 (R) The conversion of a general or limited partnership to a limited  
214 liability company under section 34-199;

215 (S) The transfer of general partnership property held in the names of  
216 all of its general partners to a general partnership which includes as  
217 general partners immediately after the transfer all of the same persons  
218 as were general partners immediately prior to the transfer;

219 (T) The transfer of general partnership property held in the names  
220 of all of its general partners to a limited liability company which  
221 includes as members immediately after the transfer all of the same  
222 persons as were general partners immediately prior to the transfer;

223 (U) Acquisition of an establishment by any governmental or quasi-  
224 governmental condemning authority;

225 (V) Conveyance of any real property or business operation that  
226 would qualify as an establishment solely as a result of (i) the



227 generation of more than one hundred kilograms of universal waste in  
228 a calendar month, (ii) the storage, handling or transportation of  
229 universal waste generated at a different location, or (iii) activities  
230 undertaken at a universal waste transfer facility, provided any such  
231 real property or business operation does not otherwise qualify as an  
232 establishment; there has been no discharge, spillage, uncontrolled loss,  
233 seepage or filtration of a universal waste or a constituent of universal  
234 waste that is a hazardous substance at or from such real property or  
235 business operation; and universal waste is not also recycled, treated,  
236 except for treatment of a universal waste pursuant to 40 CFR  
237 273.13(a)(2) or (c)(2) or 40 CFR 273.33 (a)(2) or (c)(2), or disposed of at  
238 such real property or business operation; or

239 (W) Conveyance of a unit in a residential common interest  
240 community in accordance with section 22a-134i.

241 Sec. 3. Section 32-9dd of the general statutes is repealed and the  
242 following is substituted in lieu thereof (*Effective July 1, 2009*):

243 Upon remediation as approved by the Department of  
244 Environmental Protection of the brownfield property by the  
245 municipality, [or] economic development agency [, the economic  
246 development agency or the municipality] or entity established under  
247 chapter 130 or 132, nonprofit economic development corporation  
248 formed to promote the common good, general welfare and economic  
249 development of a municipality that is funded, either directly or  
250 through in-kind services, in part by a municipality, or a nonstock  
251 corporation or limited liability company controlled or established by a  
252 municipality, municipal economic development agency or entity  
253 created or operating under chapter 130 or 132, such entity may transfer  
254 the property to any person provided such a person is not otherwise  
255 liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as amended  
256 by this act. The person who acquires title [from the municipality or  
257 economic development agency] pursuant to this section shall not be  
258 liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as amended  
259 by this act, provided that such person does not cause or contribute to

260 the discharge, spillage, uncontrolled loss, seepage or filtration of such  
261 hazardous substance, material or waste and such person is not a  
262 member, officer, manager, director, shareholder, subsidiary, successor  
263 of, related to, or affiliated with, directly or indirectly, the person who is  
264 otherwise liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as  
265 amended by this act. In addition, the Commissioner of Environmental  
266 Protection shall also provide such person with a covenant not to sue  
267 pursuant to section 22a-133 and shall not require the prospective  
268 purchaser or owner to pay a fee. The municipality, [or] economic  
269 development agency or entity established under chapter 130 or 132,  
270 nonprofit economic development corporation formed to promote the  
271 common good, general welfare and economic development of a  
272 municipality that is funded, either directly or through in-kind services,  
273 in part by a municipality, or a nonstock corporation or limited liability  
274 company controlled or established by a municipality, municipal  
275 economic development agency or entity created or operating under  
276 chapter 130 or 132 shall distribute the proceeds from any sale as  
277 follows: (1) Twenty per cent shall be retained by the municipality, [or]  
278 economic development agency, nonprofit economic development  
279 corporation or nonstock corporation or limited liability company and  
280 used for capital improvements for economic development, and (2)  
281 eighty per cent shall be transferred to the Office of Brownfield  
282 Remediation and Development and deposited in the account  
283 established pursuant to section 32-9ff.

284 Sec. 4. Subsection (a) of section 32-9ee of the general statutes is  
285 repealed and the following is substituted in lieu thereof (*Effective July*  
286 *1, 2009*):

287 (a) [The] Any municipality, [or] economic development agency or  
288 entity established under chapter 130 or 132, nonprofit economic  
289 development corporation formed to promote the common good,  
290 general welfare and economic development of a municipality that is  
291 funded, either directly or through in-kind services, in part by a  
292 municipality, or a nonstock corporation or limited liability company  
293 controlled or established by a municipality, municipal economic

294 development agency or entity created or operating under chapter 130  
295 or 132 that receives grants through the Office of Brownfield  
296 Remediation and [Development's] Development or the Department of  
297 Economic and Community Development, including those  
298 municipalities designated by the Commissioner of Economic and  
299 Community Development as part of the pilot program established in  
300 subsection (c) of section 32-9cc for the investigation and remediation of  
301 a brownfield property shall be considered an innocent party and shall  
302 not be liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as  
303 amended by this act, for conditions pre-existing or existing on the  
304 brownfield property as of the date of acquisition or control as long as  
305 the municipality, [or] economic development agency or entity  
306 established under chapter 130 or 132, nonprofit economic development  
307 corporation formed to promote the common good, general welfare and  
308 economic development of a municipality that is funded, either directly  
309 or through in-kind services, in part by a municipality, or a nonstock  
310 corporation or limited liability company controlled or established by a  
311 municipality, municipal economic development agency or entity  
312 created or operating under chapter 130 or 132 did not cause or  
313 contribute to the discharge, spillage, uncontrolled loss, seepage or  
314 filtration of such hazardous substance, material, waste or pollution  
315 that is subject to remediation under [this pilot program] section 22a-  
316 133k and funded by the Office of Brownfield Remediation and  
317 Development or the Department of Economic and Community  
318 Development; does not exacerbate the conditions; and complies with  
319 reporting of significant environmental hazard requirements in section  
320 22a-6u. To the extent that any conditions are exacerbated, the  
321 municipality, economic development agency or entity established  
322 under chapter 130 or 132, nonprofit economic development  
323 corporation formed to promote the common good, general welfare and  
324 economic development of a municipality that is funded, either directly  
325 or through in-kind services, in part by a municipality, or nonstock  
326 corporation or limited liability company controlled or established by a  
327 municipality, municipal economic development agency or entity  
328 created or operating under chapter 130 or 132 shall only be responsible

329 for responding to contamination exacerbated by its negligent or  
330 reckless activities.

331 Sec. 5. Section 22a-452 of the general statutes is repealed and the  
332 following is substituted in lieu thereof (*Effective July 1, 2009*):

333 (a) Any person, firm, corporation or municipality which contains or  
334 removes or otherwise mitigates the effects of oil or petroleum or  
335 chemical liquids or solid, liquid or gaseous products or hazardous  
336 wastes resulting from any discharge, spillage, uncontrolled loss,  
337 seepage or filtration of such substance or material or waste shall be  
338 entitled, subject to the conditions in this section, to reimbursement  
339 from any person, firm or corporation for the necessary and reasonable  
340 costs expended for such containment, removal, or mitigation,  
341 including any investigation and remediation, if such oil or petroleum  
342 or chemical liquids or solid, liquid or gaseous products or hazardous  
343 wastes pollution or contamination or other emergency [resulted from  
344 the negligence or other] was directly or indirectly caused by or  
345 contributed to or exacerbated by the actions or omissions of such  
346 person, firm or corporation. When such pollution or contamination or  
347 emergency results from the [joint negligence or other] actions or  
348 omissions of two or more persons, firms or corporations, each shall be  
349 liable [to the others] for a pro rata share of the costs of [containing, and  
350 removing or otherwise mitigating the effects] investigation and  
351 remediation of the same and for all damage caused thereby. No  
352 person, firm or corporation shall be liable for reimbursement of costs  
353 incurred unless such person, firm or corporation received notice and  
354 the opportunity to participate in the investigation and remediation  
355 pursuant to subsection (g) of this section. No such responsible person,  
356 firm or corporation shall be required to fund any remediation above  
357 the land use that existed when the person, firm or corporation owned  
358 or operated such site. If an imminent and substantial endangerment  
359 exists at the property or arises from pollution migrating beyond the  
360 property line, the provisions of this section limiting the potentially  
361 responsible party's liability shall not apply to an action for the costs  
362 associated with the investigation and remediation of such condition.

363 For the purposes of this subsection, "reimbursement" means the  
364 reimbursement of funds already expended or the recovery of funds to  
365 be expended, pursuant to this section, and "pro rata share" means an  
366 equitable proportionate share based upon equitable and site-specific  
367 factors, including, but not limited to, the activity conducted on the  
368 property, the duration of such activity or ownership of the property,  
369 compliance with the laws, regulations and other standards that existed  
370 at the time of ownership or operation with respect to the ownership or  
371 operation of the property, type and amount of pollution caused, and  
372 prior efforts to prevent, contain, mitigate or remediate such pollution.

373 (b) No person, firm, [or] corporation or municipality which renders  
374 assistance or advice in mitigating or attempting to mitigate the effects  
375 of an actual or threatened discharge of oil or petroleum or chemical  
376 liquids or solid, liquid or gaseous products or hazardous materials,  
377 hazardous wastes or hazardous substances, other than a discharge of  
378 oil as defined in section 22a-457b, to the surface waters of the state, or  
379 [which] who assists in preventing, cleaning-up or disposing of any  
380 such discharge shall be held liable, notwithstanding any other  
381 provision of law, for civil damages as a result of any act or omission by  
382 him in rendering such assistance or advice, except acts or omissions  
383 amounting to gross negligence or wilful or wanton misconduct, unless  
384 he is compensated for such assistance or advice for more than actual  
385 expenses. For the purpose of this subsection, "discharge" means  
386 spillage, uncontrolled loss, seepage or filtration and "hazardous  
387 materials" means any material or substance designated as such by any  
388 state or federal law or regulation.

389 (c) The immunity provided in subsection (b) of this section shall not  
390 apply to (1) any person, firm, [or] corporation or municipality  
391 responsible for such discharge, or under a duty to mitigate the effects  
392 of such discharge, (2) any agency or instrumentality of such person,  
393 firm or corporation, or (3) negligence in the operation of a motor  
394 vehicle.

395 (d) An action for reimbursement or recovery of the reasonable costs

396 expected for containment, removal, remediation or mitigation,  
397 including the reasonable costs of investigation and remediation, shall  
398 be commenced on or before the later of (1) six years after written notice  
399 was provided to the known responsible person, firm or corporation  
400 pursuant to subsection (g) of this section, or (2) three years after the  
401 completion of remediation activities, exclusive of any post-remedial or  
402 other long-term groundwater monitoring.

403 (e) In any action brought pursuant to this section, the Superior  
404 Court may issue an order granting the reimbursement or recovery of  
405 reasonable costs to be incurred in the future consistent with the pro  
406 rata share of the costs of the potential responsible party.

407 (f) On and after July 1, 2009, the provisions of this section shall  
408 apply to any action for the reimbursement or recovery of the  
409 reasonable costs for containment, removal, remediation or mitigation,  
410 including, but not limited to, the reasonable costs of investigation and  
411 remediation.

412 (g) Before any person, firm or corporation files an action under this  
413 section in the Superior Court, such person, firm or corporation shall  
414 provide written notice of intent to conduct any remediation to all  
415 known potential responsible parties no later than one hundred twenty  
416 days before the commencement of such activity. Such notice shall  
417 identify the property, the potential responsible party's relationship to  
418 such site, the proposed investigation or remediation activity and its  
419 estimated cost and the date that such activity is to commence. No such  
420 notice shall be required before filing a lawsuit if an imminent and  
421 substantial endangerment exists necessitating immediate action,  
422 provided notice is made within a reasonable time after immediate  
423 action is taken. Notice provided pursuant to this subsection shall be  
424 sent certified mail, return receipt requested to any potentially  
425 responsible party at their last known address on file at the Secretary of  
426 the State's office or their agent for service of process, if any. If a private  
427 corporation is no longer on file with the Secretary of the State, notice  
428 shall be sent to the last-known address of the president or, if a

429 partnership, to the last-known address of any of the known partners,  
430 or, if an individual, to the last-known residential address of the  
431 individual. The performing party shall provide a copy of the notice to  
432 the Office of the Attorney General and the Commissioner of  
433 Environmental Protection. When other potentially responsible parties  
434 become known to the performing party after the notice under this  
435 section is provided, the performing party shall provide notice  
436 pursuant to this subsection not later than forty-five days after the  
437 discovery of the other potentially responsible parties.

438 (h) Any potentially responsible party shall inform such performing  
439 party, not later than forty-five days after receipt of the notice required  
440 pursuant to subsection (g) of this section and before commencement of  
441 any activity on such site, of their intent to participate in the  
442 investigation and remediation. Such notice shall include a statement of  
443 the extent to which the potential responsible party is willing to  
444 reimburse necessary and reasonable costs or undertake investigation  
445 or remediation activities, and any objections to necessity or  
446 reasonableness of the proposed activity.

447 (i) A potentially responsible party that has exercised its right to  
448 participate and participates in the investigation and remediation of an  
449 eligible site shall be responsible solely for its pro rata share of any  
450 necessary and reasonable costs of investigation and remediation. A  
451 potentially responsible party that fails to offer and share in the costs  
452 reasonably proportionate to its pro rata share, or who fails to  
453 participate or respond to the notice provided in subsection (c) of this  
454 section shall (1) waive any right to challenge the necessity and  
455 reasonableness of investigation and remediation costs in any claim or  
456 action for reimbursement of such investigation and remediation costs;  
457 (2) pay damages to the performing party, including costs associated  
458 with any lost business opportunities; and (3) pay the performing  
459 party's attorneys fees and other costs of litigation, in the event the  
460 performing party prevails in its claim or action for reimbursement.

461 (j) A performing party that has failed to provide notice and

462 opportunity to participate to any known potential responsible party  
463 shall be prohibited from seeking reimbursement of investigation and  
464 remediation costs from such potential responsible party.

465 (k) Nothing in this section shall relieve any potential responsible  
466 party from any liability to any third party for property damage or  
467 personal injury based upon common law.

468 (l) Nothing in this section shall deprive any potential responsible  
469 party from any possible defenses to any action, including, but not  
470 limited to, contribution, available by law.

471 (m) No eligible party shall be liable for a claim under this section for  
472 any costs or damages arising from any pollution or source of pollution  
473 on or emanating from the property that occurred or existed prior to  
474 such eligible party taking title to such property provided the eligible  
475 party did not establish or create a condition or facility at or on such  
476 property that reasonably can be expected to create a source of  
477 pollution and the eligible party is not affiliated with any person  
478 responsible for such pollution or source of pollution through any  
479 direct or indirect familial relationship or any contractual, corporate or  
480 financial relationship other than that by which such eligible party's  
481 interest in the property was conveyed or financed.

482 (n) For purposes of this section: (1) "Potentially responsible party"  
483 means any person, firm, corporation or municipality that is liable  
484 under this section for an act or omission that directly or indirectly  
485 caused or contributed to or exacerbated the release, discharge, spillage,  
486 uncontrolled loss, seepage or filtration of oil or petroleum or chemical  
487 liquids or solid, liquid or gaseous products or hazardous wastes; (2)  
488 "eligible party" means a person, firm, corporation or municipality that  
489 acquired the property after the pollution or source of pollution existed  
490 or occurred and such party is not otherwise responsible pursuant to  
491 section 22a-428, 22a-432, 22a-433 or 22a-451 or pursuant to transfer of  
492 ownership filing pursuant to section 22a-134, as amended by this act,  
493 or 22a-134e and is not affiliated with any person responsible for such



494 pollution or source of pollution through any direct or indirect familial  
495 relationship or any contractual, corporate or financial relationship  
496 other than that by which such owner's interest in the property was  
497 conveyed or financed; (3) "performing party" means the person, firm or  
498 corporation that performs an investigation and remediation or  
499 contains or removes or otherwise mitigates the effects of oil or  
500 petroleum or chemical liquids or solid, liquid or gaseous products or  
501 hazardous wastes; (4) "investigation and remediation" means  
502 assessment, investigation, containment, mitigation, removal,  
503 remediation and subsequent monitoring; (5) "remediation" means the  
504 work performed on a site that is undertaken pursuant to a remedial  
505 action plan; and (6) "municipality" shall have the same meaning as in  
506 section 22a-423, and includes any municipal economic development  
507 agency or entity created or operating under chapter 130 or 132 and any  
508 nonprofit economic development corporation formed to promote the  
509 common good, general welfare and economic development of a  
510 municipality that is funded, either directly or through in-kind services,  
511 in part by a municipality, or a nonstock corporation or limited liability  
512 company established and controlled by a municipality, municipal  
513 economic development agency or entity created or operating under  
514 chapter 130 or 132.

515 Sec. 6. Section 22a-134b of the general statutes is repealed and the  
516 following is substituted in lieu thereof (*Effective from passage*):

517 (a) Failure of the transferor to comply with any of the provisions of  
518 sections 22a-134 to 22a-134e, inclusive, as amended by this act, entitles  
519 the transferee to recover damages from the transferor, and renders the  
520 transferor of the establishment strictly liable, without regard to fault,  
521 for all remediation costs and for all direct and indirect damages.

522 (b) An action to recover damages pursuant to subsection (a) of this  
523 section shall be commenced not later than six years after the later of (1)  
524 the due date for the filing of the appropriate transfer form pursuant to  
525 section 22a-134a, as amended by this act, or (2) the actual filing date of  
526 the appropriate transfer form.

527     (c) This section shall apply to any action brought for the  
528 reimbursement or recovery of costs associated with investigation and  
529 remediation, as defined in subsection (n) of section 22a-452, as  
530 amended by this act, and all direct and indirect damages, except any  
531 action that becomes final and is no longer subject to appeal on or  
532 before October 1, 2009.

533     Sec. 7. Section 22a-133dd of the general statutes is repealed and the  
534 following is substituted in lieu thereof (*Effective from passage*):

535     (a) Any municipality or any licensed environmental professional  
536 employed or retained by a municipality may enter, without liability [to  
537 any person other than the Commissioner of Environmental Protection,]  
538 upon any property within such municipality for the purpose of  
539 performing an environmental site assessment or investigation on  
540 behalf of the municipality if: (1) The owner of such property cannot be  
541 located; (2) such property is encumbered by a lien for taxes due such  
542 municipality; (3) upon a filing of a notice of eminent domain; (4) the  
543 municipality's legislative body finds that such investigation is in the  
544 public interest to determine if the property is underutilized or should  
545 be included in any undertaking of development, redevelopment or  
546 remediation pursuant to this chapter or chapter 130, 132 or 581; or (5)  
547 any official of the municipality reasonably finds such investigation  
548 necessary to determine if such property presents a risk to the safety,  
549 health or welfare of the public or a risk to the environment. The  
550 municipality shall give at least forty-five days' notice of such entry  
551 before the first such entry by certified mail to the property owner's last  
552 known address of record.

553     (b) A municipality accessing or entering a property to perform an  
554 investigation pursuant to this section shall not [incur any liability  
555 pursuant to section 22a-432 for any preexisting contamination or  
556 pollution on such property, provided, however, a municipality may be  
557 liable for any pollution or contamination resulting from a negligent or  
558 reckless investigation] be liable for preexisting conditions pursuant to  
559 section 22a-432, 22a-433, 22a-451 or 22a-452, as amended by this act, or

560 to the property owner or any third party, provided the municipality (1)  
561 did not cause or contribute to the discharge, spillage, uncontrolled  
562 loss, seepage or filtration of such hazardous substance, material, waste  
563 or pollution; (2) does not negligently or recklessly exacerbate the  
564 conditions; and (3) complies with reporting of significant  
565 environmental hazard requirements pursuant to section 22a-6u. To the  
566 extent that any conditions are negligently or recklessly exacerbated,  
567 the municipality shall only be responsible for responding to  
568 contamination exacerbated by its activities.

569 (c) The owner of the property may object to such access and entry  
570 by the municipality by filing an action in the Superior Court not later  
571 than thirty days after receipt of the notice provided pursuant to  
572 subsection (a) of this section, provided any objection be limited to the  
573 [owner affirmatively representing that it is diligently investigating the  
574 site in a timely manner and that any municipal taxes owed will be paid  
575 in full] issue of whether access is necessary and only upon proof by the  
576 owner that the owner has (1) completed or is in the process of  
577 completing in a timely manner a comprehensive environmental site  
578 assessment or investigation report; (2) provided the party seeking  
579 access with a copy of the assessment or report or will do so not later  
580 than thirty days after the delivery of such assessment or report to the  
581 owner; and (3) paid any delinquent property taxes assessed against the  
582 property for which access is being sought.

583 (d) For purposes of this section, "municipality" includes any  
584 municipality, municipal economic development agency or entity  
585 created or operating under chapter 130 or 132, nonprofit economic  
586 development corporation formed to promote the common good,  
587 general welfare and economic development of a municipality that is  
588 funded, either directly or through in-kind services, in part by a  
589 municipality, or nonstock corporation or limited liability company  
590 established and controlled by a municipality, municipal economic  
591 development agency or entity created or operating under chapter 130  
592 or 132.

593       Sec. 8. (NEW) (*Effective from passage*) At sites undergoing remedial  
594 action pursuant to subdivision (1) of subsection (b) of section 22a-133e  
595 of the general statutes or subsection (c) of section 22a-133e of the  
596 general statutes, the Commissioner of Environmental Protection may  
597 approve an alternative institutional control to protect human health  
598 and the environment, other than an environmental land use restriction,  
599 as defined in section 22a-133n of the general statutes, and such  
600 remedial action shall be deemed consistent with regulations adopted  
601 pursuant to section 22a-133k of the general statutes.

602       Sec. 9. (NEW) (*Effective October 1, 2009*) (a) There is established an  
603 abandoned brownfield cleanup program. The Commissioner of  
604 Economic and Community Development shall determine, in  
605 consultation with the Commissioner of Environmental Protection,  
606 properties and persons eligible for said program. For a person and a  
607 property to be eligible, the Commissioner of Economic and  
608 Community Development shall determine if (1) the property is a  
609 brownfield, as defined in section 32-9kk of the general statutes and  
610 such property has been unused or significantly underused since  
611 October 1, 1999; (2) such person intends to acquire title to such  
612 property for the purpose of redeveloping such property; (3) the  
613 redevelopment of such property has a regional or municipal economic  
614 development benefit; (4) such person did not establish or create a  
615 facility or condition at or on such property that can reasonably be  
616 expected to create a source of pollution to the waters of the state for the  
617 purposes of section 22a-432 of the general statutes and is not affiliated  
618 with any person responsible for such pollution or source of pollution  
619 through any direct or indirect familial relationship or any contractual,  
620 corporate or financial relationship other than a relationship by which  
621 such owner's interest in such property is to be conveyed or financed;  
622 (5) such person is not otherwise required by law, an order or consent  
623 order issued by the Commissioner of Environmental Protection or a  
624 stipulated judgment to remediate pollution on or emanating from such  
625 property; (6) the person responsible for pollution on or emanating  
626 from the property is indeterminable, is no longer in existence or is

627 otherwise unable to perform necessary remediation of such property;  
628 and (7) the property and the person meet any other criteria said  
629 commissioner deems necessary.

630 (b) Upon designation by the Commissioner of Economic and  
631 Community Development of an eligible person who holds title to such  
632 property, such eligible person shall (1) enter and remain in the  
633 voluntary remediation program established in section 22a-133x of the  
634 general statutes, as amended by this act, provided such person will not  
635 be a certifying party for the property pursuant to section 22a-134 of the  
636 general statutes, as amended by this act, when acquiring such  
637 property, (2) investigate pollution on such property in accordance with  
638 prevailing standards and guidelines and remediate pollution on such  
639 property in accordance with regulations established for remediation  
640 adopted by the Commissioner of Environmental Protection and in  
641 accordance with applicable schedules; and (3) eliminate further  
642 emanation or migration of any pollution from such property. An  
643 eligible person who holds title to an eligible property designated to be  
644 in the abandoned brownfields cleanup program shall not be  
645 responsible for investigating or remediating any pollution or source of  
646 pollution that has emanated from such property prior to such person  
647 taking title to such property.

648 (c) Any applicant seeking a designation of eligibility for a person or  
649 a property under the abandoned brownfields cleanup program shall  
650 apply to the Commissioner of Economic and Community  
651 Development at such times and on such forms as the commissioner  
652 may prescribe.

653 (d) Not later than sixty days after receipt of the application, the  
654 Commissioner of Economic and Community Development shall  
655 determine if the application is complete and shall notify the applicant  
656 of such determination.

657 (e) Not later than ninety days after determining that the application  
658 is complete, the Commissioner of Economic and Community

659 Development shall determine whether to include the property and  
660 applicant in the abandoned brownfields cleanup program.

661 (f) Designation of a property in the abandoned brownfields cleanup  
662 program by the Commissioner of Economic and Community  
663 Development shall not limit the applicant's or any other person's  
664 ability to seek funding for such property under any other brownfield  
665 grant or loan program administered by the Department of Economic  
666 and Community Development, the Connecticut Development  
667 Authority or the Department of Environmental Protection.

668 Sec. 10. Section 22a-134 of the general statutes is amended by adding  
669 subdivision (28) as follows (*Effective October 1, 2009*):

670 (NEW) (28) "Interim verification" means a written opinion by a  
671 licensed environmental professional, on a form prescribed by the  
672 commissioner, that (A) the investigation has been performed in  
673 accordance with prevailing standards and guidelines, (B) the  
674 remediation has been completed in accordance with the remediation  
675 standards, except that, for remediation standards for groundwater, the  
676 selected remedy is in operation but has not achieved the remediation  
677 standards for groundwater, (C) identifies the long-term remedy being  
678 implemented to achieve groundwater standards, the estimated  
679 duration of such remedy, and the ongoing operation and maintenance  
680 requirements for continued operation of such remedy, and (D) there  
681 are no current exposure pathways to the groundwater area that have  
682 not yet met the remediation standards.

683 Sec. 11. Subdivision (1) of subsection (g) of section 22a-134a of the  
684 general statutes is repealed and the following is substituted in lieu  
685 thereof (*Effective October 1, 2009*):

686 (g) (1) (A) Except as provided in subsection (h) of this section, the  
687 certifying party to a Form III [or Form IV] shall, not later than seventy-  
688 five days after the receipt of the notice that such form is complete or  
689 such later date as may be approved in writing by the commissioner,  
690 submit a schedule for the investigation of the parcel and remediation

691 of the establishment. Such schedule shall, unless a later date is  
692 specified in writing by the commissioner, provide that the  
693 investigation shall be completed within two years of the date of receipt  
694 of such notice, [and that] remediation shall be initiated not later than  
695 three years after the date of receipt of such notice and remediation  
696 shall be completed sufficient to support either a verification or interim  
697 verification not later than eight years after the date of such notice. The  
698 schedule shall also include a schedule for providing public notice of  
699 the remediation prior to the initiation of such remediation in  
700 accordance with subsection (i) of this section. Not later than two years  
701 after the date of the receipt of the notice that the Form III [or Form IV]  
702 is complete, unless the commissioner has specified a later day, in  
703 writing, the certifying party shall submit to the commissioner  
704 documentation, approved in writing by a licensed environmental  
705 professional and in a form prescribed by the commissioner, that the  
706 investigation has been completed in accordance with prevailing  
707 standards and guidelines. Not later than three years after the date of  
708 the receipt of the notice that the Form III [or Form IV] is complete,  
709 unless the commissioner has specified a later day in writing, the  
710 certifying party shall notify the commissioner in a form prescribed by  
711 the commissioner that the remediation has been initiated, and shall  
712 submit to the commissioner a remedial action plan approved in  
713 writing by a licensed environmental professional in a form prescribed  
714 by the commissioner. Notwithstanding any other provision of this  
715 section, the commissioner may determine at any time that the  
716 commissioner's review and written approval is necessary and in such  
717 case shall notify the certifying party that the commissioner's review  
718 and written approval is necessary. Such certifying party shall  
719 investigate the parcel and remediate the establishment in accordance  
720 with the [proposed] schedule or the schedule specified by the  
721 commissioner. [When]

722 (B) For a certifying party that submitted a Form III or Form IV  
723 before October 1, 2009, when remediation of the entire establishment is  
724 complete, the certifying party shall achieve the remediation standards

725 for the establishment sufficient to support a final verification and shall  
726 submit to the commissioner a final verification by a licensed  
727 environmental professional. For a certifying party that submits a Form  
728 III or Form IV after October 1, 2009, not later than eight years after the  
729 date of receipt of the notice that the Form III or Form IV is complete,  
730 unless the commissioner has specified a later date in writing, the  
731 certifying party shall achieve the remediation standards for the  
732 establishment sufficient to support a final or interim verification and  
733 shall submit to the commissioner such final or interim verification by a  
734 licensed environmental professional. Any such final verification may  
735 include and rely upon a verification for a portion of the establishment  
736 submitted pursuant to subdivision (2) of this subsection. Verifications  
737 shall be submitted on a form prescribed by the commissioner.

738 (C) A certifying party who submits an interim verification shall,  
739 until the remediation standards for groundwater are achieved, operate  
740 and maintain the long-term remedy for groundwater in accordance  
741 with the remedial action plan, the interim verification and any  
742 approvals by the commissioner, prevent exposure to the groundwater  
743 plume and submit annual status reports to the commissioner.

744 (D) The certifying party to a Form IV shall submit with the Form IV  
745 a schedule for the groundwater monitoring and recording of an  
746 environmental land use restriction, as applicable.

747 Sec. 12. Section 22a-133x of the general statutes is repealed and the  
748 following is substituted in lieu thereof (*Effective October 1, 2009*):

749 (a) For the purposes of this section, "applicant" means the person  
750 who submits the environmental condition assessment form to the  
751 commissioner pursuant to this section. Except as provided in section  
752 22a-133y, [a political subdivision of the state, an owner of an  
753 establishment, as defined in section 22a-134, an owner of property  
754 identified on the inventory of hazardous waste disposal sites  
755 maintained pursuant to section 22a-133c on October 1, 1995, or an  
756 owner of contaminated property located in an area for which the



757 groundwater classification is GA or GAA,] any person may, at any  
758 time, submit to the commissioner an environmental condition  
759 assessment form for [such] real property [owned by such political  
760 subdivision or such owner] and an initial review fee in accordance  
761 with subsection (e) of this section. [The owner or political subdivision]  
762 Such applicant shall use a licensed environmental professional to  
763 verify the investigation and remediation, unless not later than thirty  
764 days after the commissioner's receipt of such form, the commissioner  
765 notifies [the owner or political subdivision] such applicant, in writing,  
766 that review and written approval of any remedial action at such  
767 [establishment or] property by the commissioner will be required. The  
768 commissioner shall not process any such form submitted pursuant to  
769 this section unless such form is accompanied by the required initial  
770 review fee.

771 (b) The [owner or political subdivision] applicant shall, on or before  
772 ninety days after the submission of an environmental condition  
773 assessment form, submit a statement of proposed actions for  
774 investigating and remediating the parcel or a release area, as defined in  
775 the regulations adopted by the commissioner pursuant to section 22a-  
776 133k, and a schedule for implementing such actions. The commissioner  
777 may require the [owner or political subdivision] applicant to submit to  
778 the commissioner copies of technical plans and reports related to  
779 investigation and remediation of the parcel or release area.  
780 Notwithstanding any other provision of this section, the commissioner  
781 may determine that the commissioner's review and written approval  
782 of such technical plans and reports is necessary at any time, and in  
783 such case the commissioner shall notify the [owner or political  
784 subdivision] applicant of the need for the commissioner's review and  
785 written approval. The commissioner shall require that the certifying  
786 party submit to the commissioner all technical plans and reports  
787 related to the investigation and remediation of the parcel or release  
788 area if the commissioner receives a written request from any person for  
789 such information. The [owner or political subdivision] applicant shall  
790 advise the commissioner of any modifications to the proposed

791 schedule. Upon receipt of a verification by a licensed environmental  
792 professional that the parcel or release area has been investigated in  
793 accordance with prevailing standards and guidelines and remediated  
794 in accordance with the remediation standards, the [owner or political  
795 subdivision] applicant shall submit such verification to the  
796 commissioner on a form prescribed by the commissioner.

797 (c) If the commissioner notifies the [owner or political subdivision]  
798 applicant that the commissioner will formally review and approve in  
799 writing the investigation and remediation of the parcel, the [owner or  
800 political subdivision] applicant shall, on or before thirty days of the  
801 receipt of such notice, or such later date as may be approved in writing  
802 by the commissioner, submit for the commissioner's review and  
803 written approval, a proposed schedule for: (1) Investigating and  
804 remediating the parcel or release area; and (2) submitting to the  
805 commissioner technical plans, technical reports and progress reports  
806 related to such investigation and remediation. Upon the  
807 commissioner's approval of such schedule, the [owner or political  
808 subdivision] applicant shall, in accordance with the approved  
809 schedule, submit technical plans, technical reports and progress  
810 reports to the commissioner for the commissioner's review and written  
811 approval. The [owner or political subdivision] applicant shall perform  
812 all actions identified in the approved technical plans, technical reports  
813 and progress reports in accordance with the approved schedule. The  
814 commissioner may approve, in writing, any modification proposed in  
815 writing by the [owner or political subdivision] applicant to such  
816 schedule or investigation and remediation and may notify the [owner]  
817 applicant, in writing, if the commissioner determines that it is  
818 appropriate to discontinue formal review and approval of the  
819 investigation or remediation.

820 (d) If, in accordance with the provisions of this section, the  
821 commissioner has approved in writing or, as applicable, a licensed  
822 environmental professional has verified, that the parcel or release area  
823 has been remediated in accordance with the remediation standards,  
824 such approval or verification may be used as the basis for submitting a

825 Form II pursuant to sections 22a-134 to 22a-134e, inclusive, as  
826 amended by this act, provided there has been no additional discharge,  
827 spillage, uncontrolled loss, seepage or filtration of hazardous waste at  
828 or on the parcel subsequent to the date of the commissioner's approval  
829 or verification by a licensed environmental professional.

830 (e) The fee for submitting an environmental condition assessment  
831 form to the commissioner pursuant to this section shall be three  
832 thousand dollars and shall be paid at the time the environmental  
833 condition assessment form is submitted. Any fee paid pursuant to this  
834 section shall be deducted from any fee required by subsection (m) or  
835 (n) of section 22a-134e for the transfer of any parcel for which an  
836 environmental condition assessment form has been submitted within  
837 three years of such transfer.

838 (f) Nothing in this section shall be construed to affect or impair the  
839 voluntary site remediation process provided for in section 22a-133y.

840 (g) Prior to commencement of remedial action taken under this  
841 section, the [owner or political subdivision] applicant shall (1) publish  
842 notice of the remediation, in accordance with the schedule submitted  
843 pursuant to this section, in a newspaper having a substantial  
844 circulation in the area affected by the establishment, (2) notify the  
845 director of health of the municipality where the parcel is located of the  
846 remediation, and (3) either (A) erect and maintain for at least thirty  
847 days in a legible condition a sign not less than six feet by four feet on  
848 the parcel, which sign shall be clearly visible from the public highway,  
849 and shall include the words "ENVIRONMENTAL CLEAN-UP IN  
850 PROGRESS AT THIS SITE. FOR FURTHER INFORMATION  
851 CONTACT:" and include a telephone number for an office from which  
852 any interested person may obtain additional information about the  
853 remediation, or (B) mail notice of the remediation to each owner of  
854 record of property which abuts the parcel, at the last-known address of  
855 such owner on the last-completed grand list of the municipality where  
856 the parcel is located.

857       Sec. 13. (NEW) (*Effective October 1, 2009*) Notwithstanding any other  
 858 provisions of the general statutes, whenever a state agency or quasi-  
 859 public agency, as defined in section 1-120 of the general statutes,  
 860 solicits bids, makes a request for proposals or negotiates a contract for  
 861 the environmental remediation of a brownfield property, such bid,  
 862 proposal or contract shall include a provision whereby the  
 863 employment and utilization of green remediation technologies shall be  
 864 accorded due consideration."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	25-68d
Sec. 2	<i>from passage</i>	22a-134(1)
Sec. 3	<i>July 1, 2009</i>	32-9dd
Sec. 4	<i>July 1, 2009</i>	32-9ee(a)
Sec. 5	<i>July 1, 2009</i>	22a-452
Sec. 6	<i>from passage</i>	22a-134b
Sec. 7	<i>from passage</i>	22a-133dd
Sec. 8	<i>from passage</i>	New section
Sec. 9	<i>October 1, 2009</i>	New section
Sec. 10	<i>October 1, 2009</i>	22a-134
Sec. 11	<i>October 1, 2009</i>	22a-134a(g)(1)
Sec. 12	<i>October 1, 2009</i>	22a-133x
Sec. 13	<i>October 1, 2009</i>	New section